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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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Vol. 19

May 14, 2002

No. 19

## MAJOR ISSUES FROM THE 2002 LEGISLATIVE SESSION

These summaries highlight some of the major bills considered by the General Assembly this year. Please note that many issues which are included in this document are addressed in more than one bill. We have highlighted bills which have made the most progress towards passage.

This document will be revised and expanded. Major legislation is summarized here in a format that is intended to be more accessible than a simple reading of the bills, joint resolutions, and acts. This report, which highlights legislative activity through *Friday, May 10, 2002*, is a guide to, not a substitute for, the full text of the legislation summarized.

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# APPROPRIATIONS

## THE 2002-03 GENERAL APPROPRIATION BILL (H.4878)

The House and the Senate have approved differing plans to address the difficult 2002-2003 fiscal year. Major differences between the two plans include, but are not limited to: differences in revenue sources; differences in funding for Medicaid; differences in funding for the State Department of Education (including differing recommendations for funding the First Steps program); differences in funding the rate increase in employee health insurance; and differences in plans for distributing lottery funds. Highlights from **the House-passed budget plan** include:

- NON-RECURRING REVENUE is generated from various sources, including but not limited to:
  - Redirecting interest from various state agency restricted accounts, generating approximately \$50.3 million;
  - Establishment of a tax amnesty program, which it is estimated will generate around \$5 million;
  - Reducing the state's contribution to the employee retirement plan, and transferring various other agency funds to the General Fund, generating a total of approximately \$73 million; over \$29 million of these funds will be used to cover increases in state employee health insurance costs;
  - Transferring \$100 million from the unrestricted taxable proceeds portion of the principal of the Healthcare Tobacco Settlement Trust Fund; Out of these funds, the Silvercard prescription drug program is to be funded at \$23.2 million, \$4 million goes to the Department of Mental Health, and \$71.5 million is to be expended for Medicaid match and to reimburse nursing homes for franchise fees and provide up to \$7.5 million needed to continue the nursing home rate increases made possible by the franchise fees. *In addition, this year's joint resolution imposing an annual franchise fee on nursing homes is repealed.*
- LOTTERY - The House approved provisions authorizing participation in *multi-state lottery games*. The House specified that the \$216.2 million in lottery revenue must be considered non-recurring funds, to be expended as follows (figures are rounded):

○ Education Accountability Act Increase	\$23.9 million
○ K-5 Reading, Math, Science, and Social Studies Program	36.5 million
○ School Buses	35.0 million
○ ETV Digitalization	18.5 million
○ Aid to public libraries	1.5 million
○ LIFE Scholarship Increase (Includes technical college students)	42.1 million

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Appropriation Bill for fiscal year 2002-2003, when the bill is under consideration in the House.

*STATUS: Approved by the House.*

### **TRANSFER OF MONIES FROM EXTENDED CARE MAINTENANCE FUND (H.5003)**

The House approved and sent to the Senate H.5003. This joint resolution directs the State Treasurer to transfer the sum of sixty-one million dollars from the Extended Care Maintenance Fund (funds set aside for long-term maintenance of the Barnwell low-level nuclear waste disposal facility) to the State general fund to offset fiscal year 2001-2002 mid-year sequestrations as imposed by the State Budget and Control Board. The resolution further provides that if the Extended Care Maintenance Fund is insufficient to meet its obligations due to this transfer, the State is solely responsible for repaying an amount to restore the transferred funds.

*STATUS: H.5003 was approved by the House and is pending in the Senate Finance Committee.*

### **STATE CAPITAL IMPROVEMENT BONDS (H.3765)**

The House approved and sent to the Senate H.3765. This legislation requires that a bill authorizing the issuance of state capital improvement bonds must have a certificate attached from the Office of State Budget, certifying that certain conditions are met regarding the dollar amount of bond authorizations in the bill and regarding the debt service for the bonds. The bill requires this certificate before any bill or joint resolution authorizing the issuance of state general obligation bonds may be reported by the House Ways and Means Committee, given third reading in the House, reported by the Senate Finance Committee, given third reading in the Senate, and reported from conference or free conference committee.

*STATUS: H.3765 was approved by the House and is pending consideration in the Senate Finance Committee.*

### **DISTRIBUTION OF LOTTERY REVENUE (H.3307)**

(See summary under "Lottery" section of this document. Also, see lottery distribution plan under the 2002-2003 Appropriation Bill summary)



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the Department of Labor, Licensing and Regulation (LLR) in disputes arising from alleged violations of the Right to Work laws. In the course of investigating claims, the Director of the Department of Labor, Licensing and Regulation is authorized to hold hearings and enter a workplace in order to evaluate compliance. The Director is authorized to assess a violator a civil penalty of not more than one hundred dollars for each offense. The bill makes several amendments to penalty provisions and broadens the scope of persons prohibited from participating in unlawful labor agreements that violate an employee's right to work by allowing for penalties and/or causes of action against any person for violations. Current law allows for such actions to be taken against employers, only. The legislation also creates a private cause of action under which a person who may be caused to be denied or denied employment or be deprived of continuation of employment through force, intimidation, obstruction, interference, or threat of these in violation of right to work provisions is entitled to recover from the employer and from any other person, firm, corporation, or association by appropriate action in the courts of this State such damages as the person may have sustained including, in the discretion of the court or jury, punitive damages in addition to the actual damages.

The Senate version of the legislation differs insofar as it: (1) requires that a complaint be filed prior to the Director entering a place of employment to evaluate compliance and prior to obtaining a warrant; (2) adds an appeal process; (3) clarifies that after one year, employee has absolute right to revoke written assignment for deduction of membership dues in a labor union; (4) eliminates Section 5 which clarified the private right of action for right to work claims.

*STATUS: A Conference Committee has been appointed to address House and Senate differences on H.3142.*

## CAMPAIGN FINANCE REFORM

The House passed H.3144 and sent the bill to the Senate where it has been referred to the Judiciary Committee. The legislation provides for various campaign finance revisions, most notably:

- 1) Requires political parties, legislative caucus committees, and party committees to disclose anything of value that it receives after it reaches a \$500 threshold to include all funds received for operating expenses, "party-building" expenses, etc. Currently, parties are not required to report these funds, commonly known as "soft money".
- 2) Further defines the term "influence the outcome of an elective office" for purposes of clarifying who has to file disclosure reports. Currently, the State Ethics Act does not clearly set out who or what entities are required to file disclosure reports.

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information is received during a communication that is protected by the clergy and penitent privilege as recognized by state statute.

*STATUS: H.5048 passed the House on May 1, 2002, and was sent to the Senate where it has been referred to the Judiciary Committee.*

## **CHILD ABUSE AND NEGLECT REPORTS, STEPHANIE'S LAW (S.1208)**

The Senate passed S.1208, Stephanie's Law, and sent the bill to the House where it has been referred to the Judiciary Committee. This bill establishes more rigorous reporting and record keeping guidelines for child abuse and neglect cases in South Carolina. This bill provides that when the Department of Social Services receives a report of suspected child abuse or neglect, DSS must determine whether previous reports have been made regarding the same child or the same subject of the report. The bill further provides that if DSS does not conduct an investigation as a result of information received, DSS must make a record of the report and allow that information to be used by it and law enforcement for purposes of assessing risk and safety if additional contacts are made concerning the child, the family, or the subject of the report.

This bill also requires that DSS retain records of all reports and place each report in a specified category (suspected, indicated, or unfounded) based on the department investigation. The bill provides that reports that are classified as unfounded must be retained by DSS for up to five years. Once these records are classified, the bill limits access to them and specifically removes them from Freedom of Information Act inquiry. The bill also ends the practice of purging certain records from the central registry, allowing Department access to all reports at all times.

Finally, the bill precludes the registry from containing any report that the Department classifies as unfounded.

*STATUS: S.1208 passed the Senate on April 18, 2002, and was sent to the House where it has been referred to the Judiciary Committee.*

## **DOMESTIC VIOLENCE PREVENTION ACT (H.3056)**

The House approved H.3056, the Domestic Violence Prevention Act, and sent the bill to the Senate where it has been referred to the Judiciary Committee. The legislation provides for various penalty enhancements and revisions for domestic violence offenses.

The legislation provides for a penalty for a second offense violation of Criminal Domestic Violence and Criminal Domestic Violence of a high and aggravated nature, if committed within the previous ten years. The second offense violation would be



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enforcement must complete an investigation of the allegations. A charge may be brought only by presenting the results of the investigation conducted by law enforcement and any other evidence for review by a judge who may issue an arrest warrant upon a showing of probable cause.

A person may not be considered for pre-trial intervention if he is charged with a criminal domestic violence offense if the offender has been previously convicted of a criminal domestic violence violation or a similar offense in another jurisdiction.

The Committee amended the definition of "household member" under criminal domestic violence and protection from domestic abuse provisions so as to eliminate from the definition persons related by consanguinity or affinity within the second degree.

The bill provides that following a first offense conviction as a youthful offender the defendant may apply to have his record expunged after 15 years.

The bill also includes the provisions of H.4989 which provides for procedures for South Carolina Court Administration to receive notice of a solicitor's intent to seek the death penalty and procedures for maintaining records and statistics regarding death penalty cases.

*STATUS: H.3056 passed the House on May 2, 2002, and was sent to the Senate where it has been referred to the Judiciary Committee.*

## CONSERVATION/ HISTORIC PRESERVATION

### Conservation Bank Act (S.297)

The General Assembly passed S.297, the South Carolina Conservation Bank Act, and the Governor signed the bill into law on April 10. The legislation establishes the South Carolina Conservation Bank as an ongoing funding source governed by a twelve-member board and created to acquire interests in real property from willing sellers in order to protect wildlife habitats, forestlands, farmlands, open space, parks, historical sites, and healthy streams, rivers, bays, and estuaries. Areas are to be conserved for recreational purposes, scientific study, aesthetic appreciation, the protection of critical water resources, the maintenance of the State's position as an attractive location for visitors and new industry, and the preservation of the State's outstanding natural and historical sites for the benefit of future generations. The Conservation Bank is established to encourage cooperation and innovative partnerships among landowners, state agencies, local governments, and nonprofit organizations to ensure the orderly development of the State.

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equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided; (6) exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next. Funds within the trust fund shall be invested or deposited into interest-bearing instruments or accounts, with the interest accruing and credited to the fund.

An eligible trust fund recipient may apply for a grant or loan from the trust fund to acquire a specific interest in land identified in its application. An application must not be submitted to the board without the written consent of the owner of the interest in land identified in the application. Contiguous landowners and other interested parties may submit in writing to the board their views in support of or in opposition to the application. The board must hold a public hearing on the application at which the eligible trust fund recipient, contiguous landowners, and other interested parties shall be heard. Interested parties include representatives of the municipality, county, and public or private utilities in the area wherein the property is located. The board shall conduct a public hearing on an application before awarding a grant or loan pursuant to the application.

Before applying for trust funds for the purchase of an interest in land, the eligible trust fund recipient receiving the funds must notify the owner of the land that is the subject of the trust fund grant or loan of the following in writing: (1) that interests in land purchased with trust funds result in a permanent conveyance of such interests in land from the landowner to the eligible trust fund recipient or its assigns; and (2) that it may be in the landowner's interest to retain independent legal counsel, appraisals, and other professional advice.

The board shall evaluate each proposal according to conservation criteria listed in the bill, financial criteria listed in the bill, and the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities and other forms of public access. The board shall award grants or loans on the basis of how well proposals meet these three criteria.

The bill specifies the information that must be supplied by applicant for a grant or loan. Under the bill, an applicant is required to demonstrate that it is able to complete the project, indicate the total number of acres and describe the lands it has preserved in the State.

The board only may authorize grants or loans to purchase interests in lands at fair market value. In no cases may funds from the trust fund be used to acquire interests in lands at a price that exceeds the fair market value of the interest being acquired. However, trust funds may be used to acquire interests in land at below fair market value, but only if the owner of the interest consents and in writing to sell at below fair market value.

The Board is required, upon awarding a grant or loan, to set forth specified findings including but not limited to findings regarding the application/applicant which are



## **HISTORIC REHABILITATION INCENTIVES ACT (H.3163)**

The General Assembly passed H.3163, the South Carolina Historic Rehabilitation Incentives Act, and the legislation was signed into law by the Governor on May 1. The legislation provides state income tax credits for certain expenditures incurred in the rehabilitation of certified historic structures located in this State. The legislation provides a state income tax credit equal to ten percent of rehabilitation expenses incurred for a taxpayer who is eligible for the federal income tax credit allowed for the rehabilitation of historic structures for profit-making ventures. For taxpayers who do not qualify for the federal income tax credit and who are rehabilitating a certified historic residential structure, the legislation provides a state income tax credit equal to twenty-five percent of rehabilitation expenses incurred.

*STATUS: The General Assembly passed H.3163 and the bill was signed into law by the Governor on May 1, 2002.*

# **THE COURTS**

## **GUARDIANS AD LITEM (S.322)**

On April 24, 2002, a Conference Committee was appointed to address differences in the House and Senate versions of S.322. The bill provides requirements and restrictions pertaining to a Guardian ad Litem appointed in a private action before the family court in which custody or visitation of a minor child is an issue. A brief description of the key issues and major differences of the Guardian ad Litem legislation in the House and Senate versions are discussed below.

### **Appointment of GALs**

The House Version and Senate Versions are very similar for the appointment process for GALs. The House Version requires the court to appoint only when any of the two occur (1) when it determines that without a GAL the court would not be fully informed about the facts of the case *and* there is a substantial dispute or (2) when both parties consent.

The Senate version requires the court to appoint when any of three occur (1) it determines that without a GAL the court would not be fully informed about the facts of the case; *or* (2) there is a substantial dispute or (3) when both parties consent.

### **Training and Qualifications of GALs**

There are some differences in the areas of training and qualifications of GALs in the House and Senate Version. The House Version requires that only nonattorneys



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The House Version requires the court to set the rate of compensation at the time of appointment of the GAL. It also requires the GAL to submit *periodic* itemized billings to the parties and their attorneys.

The Senate Version requires the court to set the rate of compensation at the time of appointment of the GAL, *including an initial authorization of a fee based on the facts of the case*. It provides that the GAL must not charge a fee exceeding the initial authorization at the time of appointment. The Senate Version provides that if the GAL determines it is necessary to exceed the initial authorized fee, the GAL must provide notice to the parties and obtain the judge's written authorization to increase the fee. The Senate Version requires the GAL to submit *monthly* itemized billings to the parties and their attorneys.

Both the House and Senate Versions require the court to consider the ability of the parties to pay fees and costs at the time of appointment.

#### Disclosure

There is one significant difference between House and Senate Versions regarding disclosure of relationships of the GAL to litigants and attorneys.

The House Version requires the GAL to provide written notice, at the time of appointment, to each party of the nature, duration, and extent of any relationship the GAL or any member of the GAL's immediate family residing in the GAL's household has *(1) with any party or, (2) with any attorney only if the GAL or his immediate family has any interest adverse to an attorney* which might cause the impartiality of the GAL to be challenged.

The Senate Version requires the GAL to provide written disclosure to each party of the nature, duration, and extent of any relationship the GAL or any member of the GAL's immediate family residing in the GAL's household has with *all parties and their attorneys* in the case. The Senate Version also requires a GAL to provide an affidavit to the court, before appointment, to include a statement affirming that the GAL does not have a relationship with *any party or any party's attorney* and if the GAL does have a relationship with any party or any party's attorney, the GAL must disclose the nature, duration, and extent of the relationship.

*STATUS: On April 24, 2002, a Conference Committee was appointed to address House and Senate differences on S.322.*

#### **LEGAL NAME CHANGES (H.3906)**

This bill sets out new procedures for obtaining a legal name change in the family court. The purpose of this bill is to ensure that the court is aware of the criminal history of a petitioner before a name change is granted; and that if a petition for a name change is granted and the petitioner does have a criminal background, that

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administrator also must include the date the notice is made, the alleged crime, the date the alleged crime occurred, the county in which the alleged crime occurred, demographic information about the victim, and the person or persons charged with the crime, including their age, race, sex, and ethnic background. The court administrator must use data provided by the solicitors to maintain records and statistics regarding the basic information. The Office of Court Administration must compile, collate, index, and maintain a file of the required information and make the file available to the general public during the normal business hours of the offices of Court Administration. The legislation provides a procedure for challenging and correcting information in the file. The lack of notice given to the court administrator will never serve as a defense for the defendant of a capital case.

*STATUS: H.4989 passed the House on April 26 and was sent to the Senate where it has been referred to the Judiciary Committee. The provisions of H.4989 were also included in H.3056, the Domestic Violence Prevention Act, which passed the House on May 2, 2002, was sent to the Senate, and referred to the Judiciary Committee.*

## **DOMESTIC VIOLENCE**

(See CHILD ABUSE/ DOMESTIC VIOLENCE section of this document)

## **TRUTH IN SENTENCING (H.3141)**

In 1996, Truth in Sentencing for those convicted of offenses with maximum penalties of 20 years or more went into effect. This legislation eliminated parole for these offenders and required them to serve at least 85% of their sentences.

Most of these offenses are classified as violent crimes. However, some crimes classified as violent do not fall under Truth in Sentencing. They include Second Degree Burglary; First Offense Trafficking in Marijuana, 10-100 lbs; First Offense Trafficking in Cocaine, 10-28 grams; First Offense Trafficking in Methaqualone, 15-150 grams; First Offense Trafficking in LSD, 100-499 dose units; First Offense Trafficking in Fluintrazepam (Date Rape Drug), 1-100 grams; and First Offense Trafficking in Ice, Crank, or Crack Cocaine. Other serious offenses that do not fall under Truth in Sentencing include Lewd Act upon a Minor, which is a Class D, 15-year Felony and Embezzlement of Public Funds over \$5,000, which is a Class E, 10-year Felony.

The House version of this bill extends Truth in Sentencing provisions to all crimes in South Carolina. All offenders would be required to serve at least 85% of their sentences and would serve 100% if they do not earn work, education, or good time credits. Parole would be abolished for all offenders who commit crimes after the effective date of the act. The Senate version of this bill would apply the provisions of Truth in Sentencing to one more class of felonies to include Class D felonies and those offenses exempt from classification with maximum penalties of fifteen years



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▪ **Fingerprinting/Noncertified Teachers**

The legislation amends the definition of "noncertified teacher" for purposes of charter schools. "Noncertified teacher" is currently defined as an individual considered appropriately qualified for the subject matter taught, and who has been approved by the charter committee of the school. The legislation strikes the requirement for approval by the school's charter committee, and adds a requirement for completion of at least one year of study at an accredited college or university and a requirement for state fingerprint review.

▪ **Teacher Qualifications for Teaching Core Subjects**

The legislation provides that in either a new or converted charter school, a teacher teaching in the core academic areas of English/language arts, math, science, or social studies must be certified in those areas, or possess a baccalaureate or graduate degree in the subject he or she is hired to teach.

The legislation also provides that a charter school may hire in its discretion administrative staff to oversee daily operation of the school, and at least one of the administrative staff must be certified in the field of school administration.

▪ **Racial Composition**

The legislation includes a requirement that the racial composition of the charter school enrollment reflect that of the school district or that of the targeted student population which the charter school proposes to serve, as differing by no more than twenty percent.

▪ **Percent Preference for Charter Committee Children**

The legislation provides that children of the charter committee may be given enrollment priority so long as their enrollment does not constitute more than twenty percent of the enrollment of the charter school.

▪ **Interscholastic Participation**

The legislation adds a provision to the law that the charter contract may include participation in agreed upon interscholastic activities at a designated school within the sponsor district. The legislation further provides that students participating under this agreement shall be considered eligible to participate in league events if all other eligibility requirements are met.

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charter may be approved or renewed for a period of **five** school years, and provided that the charter may be revoked or not renewed pursuant to specified statutory provisions.

▪ **Out of District Transfers to Charter Schools**

The legislation provides that a child who resides in a school district other than the one where a charter school is located may attend a charter school outside his district of residence; however, the receiving charter school shall have authority to grant or deny permission for the student to attend according to the terms of the charter after in-district children have been given priority in enrollment. The legislation also provides that the out-of-district enrollment shall not exceed twenty percent of the total enrollment of the charter school without the approval of the sponsoring district board of trustees. The legislation also provides that the district sending children to the charter school must be notified immediately of the transferring students, and out-of-district students must be considered based on the order in which their applications are received. The legislation further provides that if the twenty percent out-of-district enrollment is from one school district, then the sending district must concur with any additional students transferring from that district to attend the charter school. The charter school to which the child is transferring shall be eligible for state and federal funding.

▪ **Surplus Buildings**

The legislation includes a provision that if a school district declares a building surplus and chooses to sell or lease the building, a charter school's board of directors or a charter committee operating or applying within the district must be given first refusal to purchase or lease the building under no more than the same terms and conditions it would be offered to the public.

*STATUS: S.12 was approved by the Senate and has been amended and reported favorably from the House Education and Public Works Primary and Secondary Education subcommittee. The bill is scheduled for consideration by the full House Education and Public Works Committee on Wednesday, May 15.*

**SCHOOL START DATE (S.992 and H.4878)**

The Senate approved S.992, which provides a declaration by the General Assembly that based on findings stated in the bill, it is in the best interests of the students of South Carolina for a uniform beginning date for the annual school term to be developed and implemented in all State public schools. The bill directs the State Board of Education to establish a task force to recommend to the Board by September 2002 a suggested uniform beginning date for the annual school term.



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The legislation affords state law enforcement authorities with new means of investigating potential terrorist threats.

**Interception of Wire, Oral and Electronic Communications**

The bill authorizes a judge of competent jurisdiction to order the interception of wire, oral or electronic communications by the State Law Enforcement Division (SLED) upon application by the Attorney General or Solicitors if such communication will provide evidence of the commission of specified violent crimes, of any offense related to terrorism or any offense related to bombs, destructive devices and weapons of mass destruction as provided by the bill.

Other investigative or law enforcement officers of governmental law enforcement agencies, government personnel and individuals operating under a government contract may assist SLED in conducting interceptions under the direct supervision of SLED.

All officers who are authorized to conduct interceptions must first undergo training provided by SLED in conducting such surveillance with emphasis on techniques for minimizing the interception of communications that fall outside of the scope of these provisions.

The legislation establishes conditions for such court orders for intercepting communications, time limits for investigations conducted under such an order, the manner in which extensions may be obtained, and procedures for operating under time-sensitive emergency conditions.

The legislation establishes new offenses to punish those who commit, attempt to commit, or support acts of terrorism.

**Terrorism Identification and Prevention Provisions**

The bill provides that it is unlawful to provide material support or resources knowing that they will be used in preparation for, or in carrying out a violation of an anti-terrorist law or in support of a foreign terrorist organization. Anti-terrorist law is defined to include multiple offenses currently established under federal law including, use, possession or development of weapons of mass destruction in furtherance of domestic and international terrorism; destruction of aircraft or aircraft facilities; hostage taking. A person who violates this provision is guilty of a felony and, upon conviction, must be fined not less than ten thousand dollars nor more than one hundred thousand dollars, and/or imprisoned not more than ten years. All property or resources pertaining to a violation is considered contraband and is subject to forfeiture. Conditions similar to the procedures used for the confiscation of property in drug trafficking offenses are established for the seizure of such property and resources and for their subsequent use or sale.

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The bill provides that restitution be ordered for certain violations.

**Freedom of Information Act Provisions**

The legislation clarifies that a public agency may prohibit disclosure of law enforcement records that are also not subject to disclosure under federal law.

The legislation authorizes a public agency to prohibit disclosure of information relating to security plans and devices of public bodies except for amounts expended for the adoption, implementation, or installation of such security plans and devices.

The legislation authorizes DHEC to regulate the disclosure of certain chemical and industrial storage information subject to federal law and federal regulations to prevent the release of certain information that would increase the risk of acts of terrorism. The director of DHEC must notify the Attorney General and identify such information and promulgate regulations to regulate access to such information.

The legislation contains numerous provisions related to a declared state of emergency.

**Price Gouging and Misleading Solicitations Prohibitions**

The legislation establishes provisions prohibiting price gouging and willfully misleading solicitation of money for charitable purposes during a state of emergency declared by the Governor or a state of disaster declared by the President.

**SLED Criminal Background Checks of Emergency Workers**

The legislation authorizes SLED, during a declared state of emergency by the Governor, to conduct state and FBI criminal background checks of persons engaged in volunteer, paid, public or commercial employment related to the emergency.

**Protection of Electronic Data**

To protect the state's critical information technology infrastructure and associated data systems in the event of a major disaster, whether natural or otherwise, and to allow the services to the citizens of this State to continue in such an event, the Office of the State Chief Information Officer (CIO) shall develop a Critical Information Technology Infrastructure Protection Plan devising policies and procedures to allow for alternative and immediate on-line access to critical data and information systems.

**Leaves of Absence for State Workers Trained in Disaster Response**

The legislation provides officers or employees of this State who are trained for disaster response by the American Red Cross or whose training is utilized by the American Red Cross a leave of absence not to exceed fifteen days in any one year to engage in training or any other duties requested by the Governor, the American



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interfere with, distract, or impede other pupils in the like exercise of individual choice.

**Display of National Mottos and Other Meaningful Documents**

The principal in each public elementary and secondary school in this State shall display on an appropriately framed background with minimum dimensions of eleven inches by fourteen inches, the following national mottos of the United States of America in a prominent place inside the school under his supervision: 'In God We Trust' and 'E Pluribus Unum'. Each public school teacher shall display in his or her classroom the motto 'In God We Trust'. The mottos 'In God We Trust' and 'E Pluribus Unum' shall also be displayed in a prominent place inside the admissions office of each public institution of higher learning.

Under the bill, an object containing the words of the Ten Commandments may be displayed on State property along with other documents of historical significance that have formed and influenced the United States legal or governmental system. The display of an object containing the words of the Ten Commandments must be in the same manner and appearance generally as other documents and objects displayed and must not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects.

*STATUS: The House passed H.4416 on February 28, 2002, and sent the bill to the Senate where it was referred to the Judiciary Committee. On May 1, the bill was recalled from the Senate Judiciary Committee and subsequently recommitted, retaining its place on the calendar.*

**RESTRICTED FERTILIZERS (H.4944)**

The House approved and sent to the Senate H.4944. This bill codifies a definition for "restricted fertilizer," which is a commercial fertilizer having a potential explosive capacity that is determined to present an unreasonable threat to public safety. The stated intent of the bill is to provide and allow for monitoring of the distribution of restricted fertilizers in this State and to encourage distributors to sell restricted fertilizers only to persons known to use such fertilizer for farm or garden purposes. The bill provides for fertilizer distribution permits, distinguishing between general and restricted fertilizer permits. A general permit authorizes the permit holder to engage in the distribution of commercial fertilizers except those determined to be restricted fertilizers. A restricted fertilizer permit authorizes the permit holder to engage in the distribution of all commercial fertilizers, including those that are designated as restricted fertilizers. The bill provides that for homeland security purposes, identifying information relating to the holder of a general or restricted fertilizer permit is exempt from disclosure under the Freedom of Information Act.

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necessary and appropriate for commercial lines of insurance which shall be developed with input by the Department of Insurance. The division, for a fee prescribed and promulgated by regulation, shall make available to insurers by subscription a monthly electronic list of newly-licensed drivers. This list must not be used for marketing, solicitation, or another purpose not specifically enumerated. It may only be used to provide an additional method to reduce the uninsured motorist population. This monthly list of newly-licensed drivers must show the: name and gender of the driver, address, date of birth, South Carolina driver's license number, and, if available, insurance information provided in the liability certification portion of the application for a driver's license. This information may be used for: (1) determining if a newly-licensed driver is insured; (2) assigning a newly-licensed driver to the proper automobile insurance policy for rating purposes; and (3) ordering a motor vehicle report on a newly-licensed driver.

If the database indicates that a motor vehicle is not insured or if the division receives notification as prescribed by regulation that a vehicle may not be insured, the division shall notify the owner of the motor vehicle that he has forty-five days to provide the division with one of the following, or the owner's license plates will be subject to suspension: (1) proof of complying coverage or of self-insurance; or (2) proof of exemption from the financial security requirements. The bill authorizes disclosure, for a fee, of an individual's reported database information upon request by specified individuals and agencies, only. Funds collected from fees shall be placed by the Comptroller General into a special restricted account to be used by the department to defray expenses of the division.

*STATUS: H.5105 passed the House on May 1, 2002, and was sent to the Senate where it has been reported out of the Banking and Insurance Committee favorable with amendment.*

## LOTTERY/GAMBLING

(Also see *Appropriations* section of this document)

### APPROPRIATION OF EDUCATION LOTTERY REVENUE (H.3307 and H.4878)

The House and Senate have approved differing plans for distribution of lottery proceeds. These plans are included in both bodies' versions of H.3307 and in the House and Senate's respective budget plans for 2002-2003. **As approved by the House**, H.3307 provides that the net proceeds from the Education Lottery Account are to be appropriated as follows (figures rounded): Education Accountability Act Increase \$23.9 million; K-5 Reading, Math, Science, and Social Studies Program \$36.5 million; School Buses \$35.0 million; ETV Digitalization \$18.5 million; Aid to public libraries \$1.5 million; LIFE Scholarship Increase (Includes technical college



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The legislation also provides that it is unlawful for a person to own, keep, operate, manage, or maintain a vessel that transports persons to another vessel for the purpose of engaging in a "cruise to nowhere" style gambling cruise. Under the bill, an 'intervening stop' occurs when a vessel departs the jurisdictional waters of this State and sails into United States or international waters, and between the time the vessel departs the jurisdictional waters of this State and the time it returns to the jurisdictional waters of this State, the vessel docks at a port of call in another state or possession of the United States or foreign country and remains in that port for a period of time sufficient to allow passengers the opportunity to disembark the vessel for sightseeing, shopping, or other tourism-related activities at that port. A person who engages in gambling that is unlawful under this act must be assessed a civil penalty of not more than one hundred dollars for each violation, with an aggregate total not to exceed one thousand dollars for a twenty-four hour period. An individual who violates provisions pertaining to the operation or facilitation of a "cruise to nowhere" must be assessed a civil penalty of not more than one thousand dollars for each violation, with an aggregate total not to exceed ten thousand dollars for a twenty-four period. The legislation provides that county and municipal governing bodies may adopt ordinances to exempt their local areas from prohibitions imposed under this legislation.

*STATUS: The House passed H.4387 on April 19, 2002, and sent the bill to the Senate where it was referred to the Judiciary Committee.*

## **GAMBLING OFFENSE REVISIONS (H.4476)**

The House approved and sent to the Senate H.4476, a bill revising the State's gambling offenses so as to modernize the language and make the provisions more comprehensive. The bill provides that it is unlawful for a person in this State or at any location within the jurisdiction of this State to gamble, wager, bet, stake, or risk money, property, or anything of value upon the outcome of a contest, game of chance, sports event, or any other current or future contingent event not under the person's control or influence, upon an agreement or understanding that he or another person will receive something of value in the event of a certain outcome. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The bill provides that it is unlawful for a person in this State or at any location within the jurisdiction of this State knowingly to own, keep, operate, manage, or maintain a device or location of any kind that is used for gambling. The legislation provides an exemption for cruises where any gambling that occurs aboard the vessel occurs only outside the jurisdictional waters of this State and the vessel makes an intervening stop. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand

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specified driver's education course in order to be issued a special restricted driver's license. The bill also provides that for purposes of issuing a special restricted driver's license, the Department of Public Safety must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program equivalent to an approved course or program in this State. In addition to current requirements, the bill also specifies that a person must satisfy the school attendance requirements imposed for the conditional license in order to be issued a special restricted driver's license. The bill also provides that a person while operating a motor vehicle under a conditional license or special restricted driver's license (currently this provision relates only to special restricted driver's license holders) who is convicted of a traffic offense (currently this provision applies only to point assessable offenses) or involved in an accident in which he was at fault shall have the removal of the restrictions postponed for twelve months and is not eligible to be issued a regular driver's license until one year from the date of the last traffic offense or accident in which he was at fault or until he is seventeen years of age. Currently, removal of the license holder's restrictions is postponed for six months during which period the licensee must be "free of any traffic convictions."

H. 3933 also provides that it is unlawful to transport a person under fifteen years of age in the open bed or open cargo area of a pickup truck or trailer. This provision does not apply when: (1) an adult is present in the bed or cargo area of the vehicle and is supervising the child; (2) the child is secured or restrained by a seat belt that meets specified standards; (3) an emergency situation exists; (4) the vehicle is being operated in an organized hayride or parade pursuant to a valid permit; (5) the vehicle is being operated while hunting or in an agricultural enterprise; (6) the vehicle is being operated in a county which has no incorporated area with a population greater than three thousand five hundred; or (7) the vehicle has a closed metal tailgate and is being operated less than thirty-six miles an hour. A person violating this provision is guilty of a misdemeanor and, upon conviction, must be fined twenty-five dollars. No driver's license points or insurance surcharge may be assessed for a violation.

*STATUS: H.3933 was approved by the House and Senate and has been signed by the Governor (Act 181). The bill became effective March 5, 2002.*

## **MOTORIST INSURANCE DATABASE PROGRAM ACT**

(See INSURANCE section of this document)

## **SPECIAL LICENSE PLATES**

This year, the General Assembly approved various bills creating special license plates. Of special note are H.4652, which creates and provides for "In God We Trust" and "United We Stand" special plates; and H.4432, which creates and provides for "God Bless America" special plates.



permanent basis who present documents indicating their intent to live, work, or study in South Carolina. The bill provides that these persons are eligible to obtain or renew a driver's license.

*STATUS: H.4670 was approved by the House and received a favorable report from the Senate Transportation Committee. The bill is on the Senate calendar where it has been ordered to third reading with notice of amendments.*

## STATE/LOCAL GOVERNMENT

### FAMILY PRIVACY PROTECTION ACT (S.204)

The General Assembly passed S.204, the Family Privacy Protection Act, and the Governor signed the bill into law on May 1, 2002. This legislation provides that all counties or state agencies, boards, commissions, institutions, departments, or other state entities must develop privacy policies and procedures to ensure that the collection, use and dissemination of personal information pertaining to citizens of the State is limited to such personal information as is required under the law and necessary to fulfill a legitimate public purpose. Under the legislation, the term 'personal information' means information that identifies or describes an individual, including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account(s) number(s), account or identification number issued by and/or used by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit record(s) or report(s). 'Personal information' does not mean information about boating accidents vehicular accidents, driving violations, boating violations, or driver status. In collecting personal information as authorized, a government entity must advise citizens that the information is subject to public scrutiny or release.

The legislation provides that a person or private entity shall not knowingly obtain or use any personal information obtained from a public body for commercial solicitation directed to any person in this State. A person knowingly violating this provision is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both. Every public body shall notify all requestors of records of the prohibition on the use of personal information obtained from public records for commercial solicitation. All state agencies shall take reasonable measures to ensure that personal information obtained from a public record is not used for commercial solicitation.

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related to employee wages that are exempt under the Fair Labor Standards Act. This provision does not limit the authority of political subdivisions to establish wage rates in contracts to which they are a party.

*STATUS: Having passed both the House and Senate, H.3289 was ratified (R296) on May 8, 2002.*

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